SENATE TAXATION
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EXEMPT PUBLICLY TRADED PARTNERSHIPS FROM LEGISLATION REQUIRING PAYMENT FOR NONRESIDENTS

Publicly traded partnerships ("PTPs"), often known as master limited partnerships or MLPs, are partnerships which are traded on public exchanges. Shares in a PTP are known as "units." A typical PTP has millions of units outstanding held by tens of thousands of individual investors. The unitholders of each PTP are scattered among the 50 states and the District of Columbia, and sometimes territories or foreign countries as well. While some smaller PTPs are limited to one or a few states, the majority are multistate businesses, and some operate in all 50 states.

- **A composite return and payment regime is administratively burdensome for the PTP and accurate withholding is impossible.** Publicly traded partnerships have tens-of-thousands of unitholders, some more than 100.000 unitholders. This is complicated further when one considers that a PTP only knows who these unitholders are on one day of the year. This is the case because most PTP units are held in "street name" by brokers; and because the trading of PTPs means that ownership changes daily.

  Brokers furnish PTPs with unitholder information only once a year, to enable each PTP to send out K-1s for federal tax filing. Even at that time, the PTP does not know the residency of the partner or the other factors that will determine their tax liabilities.

- **Withholding from distributions is a mismatch of tax to income.** An investor in a PTP is taxed not on the cash distribution he receives, but on his allocated share of the PTP's income. This is true whether or not he receives a cash distribution. The cash distribution is treated as a return of capital and is not taxed. While a partnership's income situation may affect the level of cash distributions, they are entirely different items and there is no direct correlation between them. Even if a PTP could withhold on its partners, it is thus inappropriate to withhold from one to pay the tax owed on the other.

- **There is no mechanism for PTPs to withhold or recapture any tax paid.** PTPs have no way of knowing at any given point during the year who owns their units, how many units they own, and where they live. Unlike a typical partnership structure, there is no mechanism for PTPs to withhold from distributions or seek repayment from partners for their share of the tax paid on their behalf.

- **PTPs must treat all unitholders in the same manner.** PTPs must maintain the uniformity of the economic and tax characteristics of the units. In other words, a PTP cannot treat one partner differently than another.

- **The taxable income for each partner, if any, is small.** By the time partnership income is divided among the states where it was earned, and then allocated among tens of thousands of partners, the amount of taxable income per partner is very small, often below the state's personal exemption or standard deduction. Because of various tax benefits passed through to partners, it may even be negative.

- **The state would also face an administrative burden.** State revenue departments would find the burden of administering withholding to be highly disproportionate to the small amount revenue received. Revenue officials would be faced with processing hundreds of thousands of tax payments related to PTPs operating in their states and remitting refunds on many of them.

- **The Multistate Tax Commission recommends excluding PTPs from withholding.** After considering all these arguments, the Multistate Tax Commission included an exclusion for PTPs in its model legislation relating to withholding for nonresidents.

- ***Nearly 30 states have excluded PTPs from their withholding requirements.*** These include California, Washington, Oregon, North Dakota, Colorado, Oklahoma, and Nebraska.